

Page
1. Ireland. Lords House of Commons
Vol 5. Dd
Rights of Ireland.

A
NARRATIVE
OF THE
PROCEEDINGS
OF THE
LORDS of IRELAND,

IN THE YEARS 1703 AND 1719,

In Consequence of the Attempts made at those Periods,

BY THE

LORDS OF GREAT BRITAIN,

To Enforce THEIR AUTHORITY in this KINGDOM.

TOGETHER WITH

The REPRESENTATION of the IRISH LORDS to the KING
upon that Subject, in which the Independant, Legi-
slative, and Judicial RIGHTS of THIS KINGDOM are
ably stated.

Which Representation caused the BRITISH PARLIAMENT
to pass the DECLARATORY ACT of the 6th of GEORGE
THE FIRST.

INSCRIBED

To the LORDS of PARLIAMENT and PEERS of
IRELAND.

By a FRIEND to the CONSTITUTIONAL RIGHTS
of both KINGDOMS.

THE SECOND EDITION,

D U B L I N :

Printed and Sold by all the Booksellers.

M,DCC,LXXXII.

1. Ireland. Lords House of Commons
Vol 5. Dd

REPORT OF THE
COMMISSIONERS
OF THE
PROCEEDINGS
OF THE
LORDS OF IRELAND
IN THE MATTER OF THE
INCONSISTENCY OF THE
BY THE
LORDS OF GREAT BRITAIN

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BRITANNICVM

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NARRATIVE

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IN THE YEARS 1703 AND 1719.

AS the cause for making the Declaratory British Statute of the 6th of George the First, is not generally known, and as it is at this moment a subject the most interesting, the Editor, with a view solely to the Public Good, has compiled the history of that statute from the most unquestionable authority.

That statute declares, that the kingdom of Ireland hath been, is, and of right ought to be, subordinate unto and dependant upon the imperial crown of Great-Britain, as being insepa-

A 2

rately

ately united and annexed thereunto, and that the King, with the consent of the Lords and Commons of Great-Britain in parliament assembled, hath power to make laws of sufficient force to bind the kingdom and people of Ireland.

And that the House of Lords of Ireland have not, nor ought of right to have, any jurisdiction to judge of, affirm, or reverse any judgment or decree made in any court within the said kingdom; and that all proceedings before the said House of Lords upon any such judgment or decree, are void.

So much for the declaration of our friends in Great-Britain. Let us now enquire into the opinion of our ancestors in this kingdom, upon the same subject.

This question seems to have been first agitated in the Irish House of Lords, in the year 1703, upon the petition of Edward, then Earl of Meath, and Cecilia, Countess of Meath, his wife, against the Lord Ward, complaining of their having been dispossessed of certain lands in the county of Tipperary, under a pretended order of the House of Lords of Great-Britain.

On the 11th of February 1703, we find the following resolutions unanimously entered into by the Lords of Ireland *

Resolved

* Lords Journals, Vol. II. fol. 52.

Resolved on the question nem. con. That by the antient and known laws and statutes of this kingdom, her Majesty hath an undoubted jurisdiction and prerogative of judging in this her high court of parliament, in all appeals and causes within this her Majesty's realm of Ireland.

Resolved on the question nem. con. That the determinations and judgments of this high court of parliament are final and conclusive, and cannot be reversed or set aside by any other court whatsoever.

Resolved on the question nem. con. That if any subject or resiant within this kingdom shall hereafter presume to remove any cause determined in this court of parliament to any other court, such person or persons shall be deemed betrayers of her Majesty's prerogative and jurisdiction, and the undoubted antient rights and privileges of this house, and of the rights and liberties of the subjects of this kingdom.

Resolved on the question nem. con. That if any subject or resiant within this kingdom shall presume to put in execution any order from any other court, contrary to the final judgment and determination of this high court of parliament, such person or persons shall be deemed betrayers of her Majesty's prerogative and jurisdiction, and the undoubted antient rights and privileges of this house, and of the rights and liberties of the subjects of this kingdom.

Resolved,

Resolved on the question nem. con. That if any sheriff, seneschal, coroner, or other proper officer or minister of justice, shall refuse, wilfully neglect, or defer to obey and execute the orders of this high court of parliament, such person or persons shall incur the utmost displeasure of this house.

Resolved on the question nem. con. That Edward, Earl of Meath, and Cecilia, Countess of Meath, his wife, be forthwith put into the actual possession of the lands to which they were decreed by the order of this house of the 29th of October 1695, and that the sheriff of the county of Tipperary do put them in possession accordingly.

Ordered, on motion, That the clerk of this house do prepare the above order for putting the Earl and Countess of Meath into possession, and present the same to this house for their approbation.

Ordered, on motion, that the proceedings on the orders of the day on the behalf of the Earl and Countess of Meath, be laid before this house on Monday the 21st of this instant February, and nothing to intervene.

Here we must observe, to the immortal honour of the bench of bishops, that the four archbishops, and no less than fourteen bishops, were present at the passing these truly patriotic resolutions.

On the 12th day of February, 1703, their lordships made the following order :

Whereas,

Whereas, upon hearing the complaint of the Right Hon. Edward, Earl of Meath, and Cecilia, Countess of Meath, his wife, exhibited to this house on the 19th of October last, it has appeared upon full proof that they have been illegally dispossessed of the lands of part of Rochestown, Cor-ruta, Loughloughery, Keating, Milfield, Richardstown, alias Richestown, Cloughnecody, Ard-finane, and Farren-English, Rathcordane, and Grumgill, Gortnecrannagh, Drumtrasney, Kilnemaun, Gurtinebamagh, and Garriglish, all lying and being in the county of Tipperary, the actual possession whereof was given them, pursuant to an order of this house, dated the 29th day of October 1695: We, the Lords spiritual and temporal in parliament assembled, this 12th day of Feb. 1703, do order, require, and command the sheriff of the said county of Tipperary, for the time being, forthwith to put the said Earl and Countess of Meath into the actual, quiet and peaceable possession of all the aforesaid lands and premisses, as he will answer the contrary at his peril.

From this period until the year 1717, we find the House of Lords of Great-Britain did not attempt to interfere with the rights and privileges of the lords and people of this kingdom.

But about the year 1717, that house thought proper once more to endeavour the establishment of their usurped authority, and accordingly entertained an appeal from Maurice Annesley, Esq; against a decision of the Lords of Ireland, reversed their decree, and ordered the sheriff of the county of Kildare to restore to Mr. Annesley the possession

sion of certain lands, of which he had been dispossessed by the order of the Irish Lords.

And to enforce this order, the British Lords had recourse to the authority of the barons of the Court of Exchequer here, who ordered the sheriff of Kildare to restore Mr. Annesley to the possession of his lands, according to the order of the Lords of Great-Britain.

The sheriff (Alexander Burrowes, Esq.), Hampden-like, refused obedience to this illegal order: the barons endeavoured to enforce it by the imposition of heavy fines, whereupon he petitioned the Irish Lords for relief, which having been referred to a committee of the house, they, on the 28th July 1719, made the following report, and entered into the following resolutions and proceedings:

The Lords committees for courts of justice, to whom the petition of Alexander Burrowes, Esq; late sheriff of the county of Kildare, was referred, do find,

That, by the order of this house of the 3d of October 1717, Hester Sherlock, widow, was, upon the 6th of the same month, put into the actual possession of the lands of Little Rath, Bodingstown, Darr, and Mullenefooky, in the county of Kildare, by Edward Conyers, under-sheriff to Charles Nuttal, Esq; then high-sheriff of the said county, to continue therein until he should receive thereout

• Lords Journals, Vol. II. fol. 621 to 625.

thereout the sum of £1507 14 8½, chargeable on the said lands; and the said Hester continued so possessed, by virtue of the said order, for near two years.

That, by the minutes of the Chancery side of the Exchequer, it appears, that the Lord Chief Baron of the Exchequer, on the 19th of February, 1717, produced a letter, dated London the 8th of February, 1717, signed Cowper C. in which two papers were inclosed, dated the 6th of February, 1717, signed "William Cowper, Cler. Parliamentor." directed to the Lord Chief Baron of the Exchequer in Ireland, and the rest of the barons of the said court, alleged by the Lord Chief Baron to be orders from the Lords in Great Britain, requiring them to restore Maurice Annesley, Esq; to the possession of the lands he was dispossessed of, pending his appeal in the House of Lords of Great-Britain.

That on the said 19th day of February, 1717, in pursuance of the said alleged orders and letter (inserted at the end of this report) though no affidavit had been made, that the said orders or letter were regularly compared and signed, the said Lord Chief Baron and the other barons, without any motion by counsel or attorney, ordered an injunction for the restoring the said Maurice Annesley to possession of the lands he was dispossessed of, pending his said appeal in the name of the Chancellor, Treasurer, and Barons of the said Court of Exchequer, whereby the sheriff or sheriffs of the county or counties where the said lands lay, was forthwith to put the said Maurice into the possession of the said lands.

B

That,

That, in order to make out the said injunction, the said court ordered the said Maurice Annesley, his attorney, agent, solicitor, or counsel, should forthwith attend the chief remembrancer, or his deputy, with the name of the lands of which the said Maurice Annesley was so dispossessed of, and also the county or counties where the said lands lay.

That, upon the 14th of March, 1717, affidavit was made before the Lord Chief Baron, by John Annesley of Ballysax, in the county of Kildare, Esq; wherein Hester Sherlock was made plaintiff, and Maurice Annesley, Esq; defendant; that he the said John was dispossessed of the lands of Little Rath, Darr, Bodingstown, and Mullenefooky, which he the said John held by the virtue of a lease from the said Maurice Annesley, pending his said appeal, and that the said John's lease was then in being and undetermined.

That, upon the 14th of March, 1717, the said affidavit of the said John Annesley was filed in the chief remembrancer's office, in order to have the said injunction made out, but before the said injunction issued, it appears by the examination of Mr. John Draycott, attorney for Mrs. Sherlock in the Exchequer, (after having been sworn at the bar of this house); that he the said Draycott attended Mr. John Becher, then deputy chief remembrancer, at his office, and in the presence of the said John Annesley, informed the said Becher that the said affidavit was insufficient, and that the said Draycott was ready to prove that the said Maurice Annesley was not at the time of his said appeal,

peal, nor at any time since, in possession of the said lands mentioned in the said affidavit, having sold the said lands some years before to Andrew Wilson, Esq; and Mrs. Frances Harman.

That by two copies of memorials out of the registers office (for registering deeds, &c. pursuant to act of parliament) proved by the said Draycott, to be true copies of the memorials remaining in the said office, it appears, that by deeds of lease and release bearing date respectively the 1st and 2d days of March 1714, the lease being made between Jeffrey Paul, Esq; of the one part, and Andrew Wilson, Esq; of the other part, and the release made between the said Jeffrey Paul of the first part, said Andrew Wilson, of the second part, and Maurice Annesley, Esq; of the third part; whereby the several lands of Little Rath, Darr, and Bodingstown, in the barony of Naas, and county of Kildare, were, for the considerations therein mentioned, conveyed to the said Andrew Wilson, and his heirs for ever; and the Right Hon. the Lord Altham, upon his honour, declared that he knew that John Annesley of Ballysax, Esq; had paid rent to the said Andrew Wilson, by virtue of and under the said purchase, but believed that the Lord Chief Baron, or the other barons, knew nothing thereof. It also appears, that by deeds of lease and release, bearing date respectively the 2d and 3d days of April, 1715, made between Maurice Annesley, Esq; of the one part, and Frances Harman, of the city of Dublin, widow, of the other part, by which said release the said Maurice Annesley, for the considerations therein mentioned, conveyed to

the said Frances Harman, and her heirs for ever, the lands of Mullenefooky, in the said county of Kildare. That notwithstanding, there was no county mentioned in the said affidavit, and said notice given of said sale to the said officer as aforesaid, neither did it appear by the said affidavit that the said Maurice Annesley was dispossessed of the said lands therein mentioned, pending his appeal, the said injunction issued, directed to the sheriff of the county of Kildare, bearing date the 22d of February, in the 4th year of his Majesty's reign, signed "Galfridus Gilbert," and returnable into the said court in Quind. Pasch. then next ensuing.

That, by an affidavit sworn by John Annesley, on the 7th of May, 1718, before Mr. Baron St. Leger, and filed in the chief remembrancer's office the 9th of the same month, wherein he made Maurice Annesley, Esq; plaintiff, and Hester Sherlock, widow, defendant, in which the said John Annesley deposed, that on or about the 15th of March preceding, he delivered the before-mentioned injunction to Alexander Burrowes, Esq; then high-sheriff of the said county of Kildare, and shewed the said sheriff a letter of attorney from the plaintiff, empowering the said John Annesley to receive the possession of the said lands in the said injunction mentioned, but the said sheriff refused to execute the said injunction.

That the said John Annesley, in his proper person, on the 13th of the said month, moved the said court upon an attested copy of the said affidavit, but the said Draycott insisting that there
was

was no such cause in court, the said Annesley was directed by the said court to amend his affidavit, and move it again.

That the said Annesley thereupon erased and altered the said copy, and made Hester Sherlock, widow, plaintiff, and Maurice Annesley, Esq; defendant, and swore the same before Mr. Baron St. Leger, and filed the said affidavit so amended in the chief remembrancer's office, without any alteration made in the body of the said affidavit, which was proved by the deposition of Daniel Reading, Esq; deputy chief remembrancer, who was sworn at the bar of this house, and examined before the said Lords committees.

That the same day, viz. 13th May, upon reading the said affidavit the said court was informed by Counsellor Dixon, that what was sworn in the said affidavit could not be true, for that the said Annesley swore he had a letter of attorney from the plaintiff, (who was Mrs. Sherlock) to receive possession of the lands therein mentioned, when in truth, Mrs. Sherlock was then in actual possession of said lands.

That the Lord Chief Baron said, it was only a mistake, and without rectifying the same, on motion of Mr. John Bauman, an attorney, the court ordered the said sheriff to be fined 40s. if he did not return the said injunction in four days, and on said Bauman's several motions there were fines at several times laid upon the said sheriff for not returning the said injunction, which amounted to £77, which was proved by the minutes of the said court, and the testimony of the said Draycott.

That

That the said Draycott likewise proved, that the said Lord Chief Baron, and the other barons, had due notice of the said order of this house, and the resolutions thereof, made the 11th February, 1703, before any proceedings were had in the said cause, subsequent to the said order of this house, of the 3d of October, 1717, and that the said Annesley and Barrman were served with copies of the said order and resolutions, before any motions were made by them in the said cause.

That, by the minutes of the 13th of June, 1718, taken in the said court, it appears that Mr. Chancellor of the Exchequer declared that the order of the House of Lords of England being only directed to the barons of that court, and that he found that the order of that court, which was made thereon, was made as if done by him and the treasurer, as well as by the barons; that he apprehended, that in regard the said orders were not directed to him, or he present when the said order of the Court of Exchequer was made, that he had nothing to do therewith, and did not consent thereto.

That it appeared by the testimony of the said Mr. Reading, that the said cause between Sherlock and Annesley was of the Chancery side of the Exchequer, and that all bills in the Chancery side of the said court were directed to the Chancellor, Treasurer, and Barons, and believed, that if a bill was directed otherwise, it would be error.

That, upon the 13th of June, 1718, on motion of the said Bauman, an attachment to the pursuivant was awarded against the said Burrowes,
for

for not returning the said injunction, bearing test the 1st day of July, in the 4th year of his Majesty's reign, and returnable before the Chancellor, Treasurer, and Barons of the said court, in Cras. Anim. then next.

That upon the 7th of July, 1718, the said Burrowes returned the said injunction, and the said Barrman was acquainted therewith by the said Draycott, who told the said Barrman, that he was ready to pay him the cost of imposing the said fines and pursuivant, which the said Barrman refused, and told the said Draycott, that he must first have the said sheriff in custody; that the said Draycott applied again to the said Bauman, and the said Bauman said, he must first lay the said sheriff by the heels.

That, by the testimony of the said Mr. Reading and Mr. Draycott, Barons Pocklington and St. Leger, upon the 16th July, 1718, sat in the Exchequer-chamber on the reducing of fines;—that the fines imposed upon the said sheriff were then read by Mr. Becher, the officer who informed the said barons, that the said injunction was returned, that a pistole and seven half crowns were paid to the box, and the said fines were then taken off by the said barons.

That upon the same day, in the afternoon, the said Becher, Reading, and Draycott were sent for to the Lord Chief Baron's house, where the two other barons were with his lordship; that the said injunction was sent for, and said injunction and return thereon was read, and the barons declared, that it was no return; that said Draycott told

told his lordship, that he hoped he would at least respite the said fines till the then next term, or give the said sheriff an opportunity to justify his said return, which was refused; that the list of fines which was that day read in the said Exchequer-chamber, was then called for, and the fines imposed upon the said Burrowes were then read; that the said Draycott was obliged to take back the said money which he had paid to the box, for taking off the said fines, and the same were then estreated.

That the return made by the said sheriff upon the said injunction was to this purpose, viz. That before the said writ came to him, the order of this house of the 3d of Oct. 1717, and the resolution of this house of the 11th of Feb. 1703, were delivered to him, which he recites in hæc verba, which return the Lords committees have thought fit to annex to their report, "That Charles Nuttal, Esq; late sheriff of the county of Kildare, by virtue of the said order of the 3d of Oct. put Hester Sherlock into the possession of the premises, and that she was at the time of the return in possession thereof."

That, by reason of their order and resolutions, he durst not restore Maurice Annesley to the possession of the lands in the said injunction mentioned, in prejudice and violation of the rights and privileges of this house.

That upon the 7th Nov. 1718, upon the motion of the said Bauman, said attachment to the pursuivant against the said Burrowes was renewed, bearing test the 6th Nov. last, and returnable before

before the said Chancellor, Treasurer and Barons, in Octav. Sanct. Hilarii then next ensuing, and on the 30th Jan. following, the said attachment was again ordered to be renewed; that the said sheriff, by reason of the said attachments, was obliged to abscond, and thereby prevented from coming upon his accounts, and was upon that account fined by the said court £1200, and upwards.

That, upon the 4th Feb. 1718, the Lord Chief Baron, and Mr. Baron Pocklington, upon the receipt of three papers which the said barons alleged to be orders from the House of Lords of Great-Britain, dated the 23d Jan. 1718, signed "William Cowper, Cler. Parliamentor." in a letter produced by the said barons from the Lord Chancellor, dated London 27th Jan. 1718, signed "Parker, C." which came by post, directed to the Lord Chief Baron of the Exchequer in Ireland, and the rest of the barons of that court, whereby it was ordered, that the barons of the said court of Exchequer should cause Hester Sherlock to account before them, upon oath, for the rents and profits of the estate in question, which she had made or received since her gaining the possession thereof by the order of the House of Lords in Ireland, and to answer and pay the same to Maurice Annesley, Esq; but without prejudice in case of an appeal; also, that the barons of the said court were directed to proceed by the most speedy and effectual methods to cause possession of the estate of the said Maurice Annesley, as required by their order of the 6th of February, to be restored to him; and also, that the Chancellor of Great-Britain should transmit to the said barons the said orders, and that they should give an account of what should be done therein.

C

That,

That, without any proof by affidavit (as usual in courts of equity) that the said alleged orders were regularly signed and compared, and without motion of counsel or attorney, it was ordered in the name of the Chancellor and Treasurer, Lord Chief Baron and the rest of the barons of his Majesty's Court of Exchequer in Ireland, that the injunction of that court should forthwith issue, directed to the said Hester Sherlock, and to the several and respective tenants of the lands in question, requiring them, and every of them, quietly to restore to the said Maurice Annesley, the possession of the town and lands of Little Rath, Bodingstown, Darr, and Mullenefooky, lying and being in the county of Kildare, the said land by the said barons supposed to be comprehended in the said order.

That the said injunction was ordered to be served upon the said persons, by the pursuivant attending the said court, or by any other person or persons whom the said Maurice Annesley or his agent should appoint. And the said Maurice Annesley or his agent was thereby required to leave the names of the several and respective tenants of the said lands at the proper office, in order to be inserted in the said injunction; and also ordered, that the rents of the said lands remaining in the several tenants hands, from the time the said Hester Sherlock was put into possession, should be forthwith by them paid over to the said Maurice Annesley; and that a copy of the said order should be served upon the said several tenants of the said lands, together with the said injunction, though by the order of the House of Lords of Great-Britain, the said barons were only directed to oblige Hester Sherlock to account before them upon oath for the rents of the said lands, received by her, since her gaining the possession thereof, which she was to pay

pay to Maurice Annesley without prejudice, in case of an appeal.

That, pursuant to the said order of the 4th Feb. an injunction, issued out of the said court, signed "Jeff. Gilbert," bearing test 12th of Feb. last, directed to Hester Sherlock and twenty-one persons, as tenants to the said lands; that the said Hester Sherlock was never served with the said injunction or order, notwithstanding which she was thereby dispossessed of the said lands about the 20th of Feb. last, by the attornment of the tenants, except a small part thereof, in the possession of Denis Galvin.

That, upon an affidavit made by Rich. Lyons, in a cause of Annesley vers'. Sherlock, sworn before Mr. Baron St. Leger, the 23d of Feb. last, and upon motion of said Bauman, an attachment to the pursuivant was, the same day, ordered by the said court against said Denis Galvin. for not obeying the said injunction, though no such person was named in the said writ of injunction.

The said Lords committees had also the oath administered to the Barons of the Exchequer, laid before them by Mr. Hartley Hutchinson, deputy-clerk of the Crown in the High Court of Chancery, and is as follows, viz.

"Ye shall swear, that well and truly ye shall
 "serve the King in the office of Baron of his Ex-
 "chequer, and that truly ye shall charge and dis-
 "charge all manner of people, as well the poor as
 "rich, and that for highness, nor for riches, nor for
 "hatred, nor for the estate of no manner of person
 "or persons, nor for any good, deed, gift, nor
 "promise of any person, the which is made to you,
 "nor by craft, nor by engine, ye shall let the King's
 "right,

“ right, nor none other persons right ye shall dis-
 “ turb, let, nor respite against the laws of the land,
 “ nor the King’s debts ye shall put in respite where
 “ that they may goodly be levied; and that the
 “ King’s needs ye shall speed, afore all other; and
 “ that for gift, wages, nor good deed, ye shall
 “ lean, disturb, nor let the profit and reasonable
 “ advantage of the King in the advantage of any
 “ other person, nor of yourself; and that nothing
 “ ye shall take of any person, for to do wrong or
 “ right, or delay, or for to deliver or to delay the
 “ people, which that have to do afore you, but as
 “ hastily as ye may them goodly to deliver without
 “ hurt to the King; and having no regard to any
 “ profit that might thereof to you be therein, you
 “ shall make to be delivered. And whereas, ye
 “ may know any wrong or prejudice to be done to
 “ the King, ye shall put and do all your power
 “ and diligence that to redress. And if ye may
 “ not do it, ye shall tell it to the King, or to them
 “ of his council, which may make relation to the
 “ King, if ye may not come to him to the King’s
 “ Majesty’s Lieutenant, or other chief governor or
 “ governors of this realm for the time being, and
 “ the King’s council ye shall keep and layne, in
 “ all things as God you help, and by the contents
 “ of this book.”

The committee humbly take leave to observe
 to your lordships, that there was no name of any
 attorney to the first injunction.

Which report being again read by the clerk at
 the table, Mr. Joseph Harrison, an officer of the
 Court of Exchequer, being ordered to attend, was
 called in and sworn at the bar, and examined, who
 deposed, That fines imposed by the Barons of the
 Exchequer upon Alex. Burrowes, Esq; late Sheriff
 of

of the county of Kildare, amounting to £ 77. were estreated from the Chief Remembrancer's Office to the Pipe-Office. The clerk of the Pipe wrote them down to the Comptroller of the Pipe; and the Comptroller of the Pipe sent out those fines in process; says he is obliged to levy or discharge those fines.

The said Harrison then produced the fines imposed on the sheriff of the county of Kildare, and Grand Roll of the Pipe.

The said Harrison being then ordered to withdraw,

The said fines imposed upon the said sheriff were then read.

A message was sent to the House of Commons, by Mr. Justice Macartney, and Mr. Justice Boate, to desire that captain Pratt, a member of their House, and a public officer, may have leave immediately to be examined on oath at the Bar of this House, in a matter of the utmost consequence to the kingdom.

The Lord Chief Baron, and the other Barons being asked, whether they did, at any time, acquaint the Chief Governor, or any of his Majesty's Privy Council, with the orders they received from Great Britain, in the cause of Sherlock and Annesley:

Who answered by the Lord Chief Baron, that if this question was put, he was to criminate himself, he desired to be excused from answering.

Mr. Justice Macartney and Mr. Justice Boate informed the House, that they had attended the House of Commons by their lordships orders,

orders, in relation to captain Pratt, who were pleased to say, that they would return an answer by messengers of their own.

The petition of Alexander Burrowes, Esq; was then read. Also,

The Decretal Order of this House of the 3d of October, 1717, in the cause of Sherlock and Annesley; and also,

The Resolutions of this House of the 11th of February, 1703, in the case of the Earl of Meath, were severally read.

Resolved, on the question, That Alexander Burrowes, Esq; late high sheriff of the county of Kildare, has fully proved the allegations of his petition to the satisfaction of this House.

Resolved, on the question, That the said Alexander Burrowes, Esq; late high sheriff of the county of Kildare, in not obeying the injunction issued forth out of his Majesty's Court of Exchequer, dated the 22d of February, 1717, in the cause between Sherlock and Annesley, has behaved himself with integrity and courage, and with due respect to the Orders and Resolutions of this House.

Resolved, on the question, That the fines imposed upon Alexander Burrowes, Esq; by the Court of Exchequer, amounting to £. 77, for not returning the writ of injunction in the cause between Sherlock and Annesley, be taken off without fees.

Resolved,

Resolved, on the question, That the fines imposed upon Alexander Burrowes, Esq; by the Court of Exchequer, for not entering on his accounts, amounting to £1200. and upwards, be taken off, when he shall have made a just account, without other fees than such as are usual on passing Sheriffs Accounts.

Resolved, on the question, That the Lord Chief Baron, and the other Barons of the Court of Exchequer, had due notice of the Resolutions of this House, made the 11th of February, 1703, in the cause of the Earl of Meath, and Lord Ward, before they made an Order for an injunction to put Maurice Annesley into possession.

Resolved, on the question, That the Lord Chief Baron and the other Barons of the Court of Exchequer, had due notice of the Order of this House, of the 3d of October, 1717, in the cause of Sherlock and Annesley.

Resolved, on the question, That Jeffrey Gilbert, Esq; Lord Chief Baron of his Majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley; as also against Alexander Burrowes, Esq; late high sheriff of the county of Kildare, has acted in direct violation of the Orders and Resolutions of this House.

Resolved, on the question, That Jeffrey Gilbert, Esq; Lord Chief Baron of his Majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley; as also, against Alexander Burrowes, Esq; late high sheriff of the county of Kildare, has acted in manifest derogation to, and diminution of the King's prerogative,

gative, of finally judging in his High Court of Parliament in Ireland : as also, of the rights and privileges of this kingdom, and the Parliament thereof.

Resolved, on the question, That John Pocklington, Esq ; one of the Barons of his Majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley ; as also, against Alexander Burrowes, Esq ; late high sheriff of the county of Kildare, has acted in direct violation of the Orders and Resolutions of this House.

Resolved, on the question, That John Pocklington, Esq ; one of the Barons of his Majesty's Court of Exchequer in Ireland, in the proceedings in the cause between Sherlock and Annesley ; as also, against Alexander Burrowes, Esq ; late high sheriff of the county of Kildare, has acted in manifest derogation to, and diminution of the King's prerogative, of finally judging in his High Court of Parliament in Ireland : as also, of the rights and privileges of this kingdom, and the Parliament thereof.

Resolved, on the question, That Sir John St. Leger, knight, one of the Barons of his Majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley ; as also, against Alexander Burrowes, Esq ; late high sheriff of the county of Kildare, has acted in direct violation of the Orders and Resolutions of this House.

Resolved, on the question, That Sir John St. Leger, knight, one of the Barons of his Majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley ; as also, against

against the said Alexander Burrowes, Esq; late high sheriff of the county of Kildare, has acted in manifest derogation to, and diminution of the King's prerogative, of finally judging in his high Court of Parliament, in Ireland; as also, of the rights and privileges of this kingdom, and the Parliament thereof.

A message was brought from the House of Commons, by Mr. St. John Broderick, and others, to inform the House, that the Commons do not think fit to come to any Resolution, as to giving John Pratt, Esq; a member of their House, leave to be examined at the bar of this House, till they are informed by their lordships in what cause and matter he is to be examined.

A message was sent to the House of Commons, by Dr. Usher, and Mr. Stephens, two of the Masters in Chancery, to acquaint them, that the matter in which captain Pratt is desired to be examined, is to know whether he hath paid any, and what sum, or sums of money, to Hester Sherlock, at what time, and on what account.

Ordered, That the further consideration of the Report made this day, by the Lord Bishop of Clogher, from the Lords Committees, for courts of justice, be adjourned till to-morrow morning.

On the 29th and 30th of July, 1719, the following Resolutions, and Proceedings were had:*

The House proceeded on the further consideration of the Report made by the Lord Bishop of Clogher, from the Lords Committees for courts of justice.

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Resolved,

* Lords Journals, Vol. II. fol. 625 to 629.

Resolved, on the question, *nem. con.* That it is the duty of the Barons of the Exchequer, where there is any wrong or prejudice done to the King in matters lying before them, to inform the King or the Chief Governor or Governors of this kingdom, or the Council.

Resolved, on the question, That the case of Sherlock and Annesley, as it lately lay before the Barons of the Exchequer, being matter not only of Law, but of State, ought to have been laid before the King, the Chief Governor or Governors of this kingdom, or the Council of the same, it so nearly concerning his Majesty's prerogative, and the interest of the whole kingdom.

Resolved, on the question, That Jeffrey Gilbert, Esq; Lord Chief Baron of the Court of Exchequer, John Pocklington, Esq; and Sir John St. Leger, knight, Barons of the same, in their proceedings in the cause between Sherlock and Annesley; and against Alexander Burrowes, Esq; late high sheriff of the county of Kildare, have acted contrary to law, and to the established practice of the King's Courts.

Dr. Usher, and Mr. Stephens being returned from the House of Commons, acquainted their lordships, that the Commons have given leave that captain Pratt do give his testimony (if he think fit) in the matter desired by this House.

Captain John Pratt, Deputy Vice-Treasurer, being then ordered to be called in, and sworn at the Bar, and upon his examination being asked, What transactions had passed between him and Mrs. Hester Sherlock, in relation to the lands of Darr, and the other lands decreed to her by this House,

House, till she should receive thereout the sum of money in the said decree mentioned ?

Answered, That Mrs. Sherlock, and her friends applied to him to make up that affair. Mr. Palmer, for Mr. Annesley, had done the same, upon which he endeavoured to do good offices between them, and found there was no other way to put an end to that troublesome business but by buying her decree. And about the 1st or 2d of July last, he agreed with her, and bought her title for £1860.

Being asked, whether the money was paid ?

Answered, that it was ; and that he has an instrument from Mrs. Sherlock, to make such conveyance as shall be necessary, which is now in the hands of a lawyer.

Being asked, whether Mr. Annesley consented to the agreement, or whether he expects possession of these lands ? whether any body put the said Pratt upon purchasing Mrs. Sherlock's decree ?

Answered, That he purchased the same by no person's order, but private gentlemen gave it their opinion, that it would be a very good act ; and that he has no defeasance from any person, if he should be evicted.

Being asked whether he had given the £1860 without any direction, advice or hint, of being indemnified ?

Answered, That he has no manner of indemnification : believed it to be a very good office ; and that by conversation with persons of judgment, thought he should not lose by it : that he purchased the decree, with hopes of being re-

compenced by the King or Government, as a man who had lost a leg or an arm in the service of his country; but has not any promise of being considered for the goodness of his service.

Then captain Pratt was ordered to withdraw.

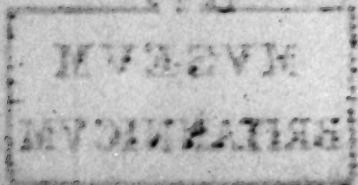
It is ordered by the Lords Spiritual and Temporal, in Parliament assembled, that the Serjeant at Arms attending this House, his deputy, or deputies, do forthwith attach the bodies of John Annesley, of Ballyfax, in the county of Kildare, Esq; and John Bauman, Gent. and keep them in safe custody until further Order of this House; and this shall be a sufficient warrant on that behalf.

To Thomas Carter, Esq; Serjeant at Arms, attending this House, his deputy, or deputies, and every of them.

The Lord Chief Baron, and the other Barons of his Majesty's Court of Exchequer, being ordered to withdraw :

Resolved, on the question, That Jeffrey Gilbert, Esq; Lord Chief Baron of the Court of Exchequer, having taken upon him to put in execution, a pretended Order from another Court, contrary to the final judgment of this High Court of Parliament, in the cause between Sherlock and Annesley, is a betrayer of his Majesty's prerogative, and the undoubted ancient rights and privileges of this House, and of the rights and liberties of the subjects of this kingdom.

Resolved, on the question, That John Pocklington, Esq; second Baron of the Court of Exchequer, having taken upon him to put in execution a pretended Order from another Court,
contrary



contrary to the final judgment of this High Court of Parliament, in the cause between Sherlock and Annesley, is a betrayer of his Majesty's prerogative, and the undoubted ancient rights and privileges of this House, and of the rights and liberties of the subjects of this kingdom.

Resolved, on the question, that Sir John St. Leger, third Baron of the Court of Exchequer, having taken upon him to put in execution a pretended order from another court, contrary to the final judgment of this High Court of Parliament, in the cause between Sherlock and Annesley, is a betrayer of his Majesty's prerogative, and the undoubted ancient rights and privileges of this house, and of the rights and liberties of the subjects of this kingdom.

It is ordered, by the Lords spiritual and temporal in parliament assembled, that the Right Hon. Jeffrey Gilbert, Esq; Lord Chief Baron of the Court of Exchequer, shall, for the said offences, be taken into the custody of the Gentleman Usher of the Black Rod attending this house.

It is ordered, by the Lords spiritual and temporal in parliament assembled, that John Pocklington, Esq; second Baron of the Court of Exchequer, shall, for the said offences, be taken into the custody of the Gentleman Usher of the Black Rod, attending this house.

It is ordered, by the Lords spiritual and temporal in parliament assembled, that Sir John St. Leger, Knt. third Baron of the Court of Exchequer, shall, for the said offences, be taken into the custody of the Gentleman Usher of the Black Rod, attending this house.

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Captain

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BRITANNICVM

Captain Pratt being again called in, was at the bar further examined, and produced an instrument; and being asked whether the subscription "Hester Sherlock" to the said instrument, was the hand-writing of the said Hester?

Answered, It was; that Mr. Whitney mentioned therein, was his lawyer, and that his name was made use of in trust for him the said Pratt.

Being asked, Who it was drew said instrument?

Answered, That it was Mr. Draycott.

The said instrument was then brought to the table, and read as follows, viz.

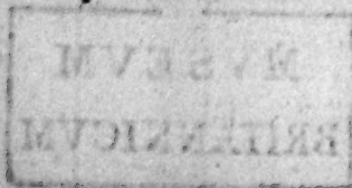
" I do acknowledge to have received from Boleyn Whitney, of the city of Dublin, Esq; the sum of £1860, in full consideration of the money decreed unto me by the Rt. Hon. the House of Lords of Ireland. And I do hereby promise and oblige myself to perfect such further release, conveyance, or assignment of the decree, made by the said house in my favour, as counsel shall advise. And I do hereby, for me, my executors, and administrators, absolutely and for ever release and discharge the same, and any demand that I, my executors, and administrators, may have, or claim on account thereof. Witness my hand and seal, this 2d day of July, in the year of our Lord 1719."

HESTER SHERLOCK. (Seal.)

Scaled and delivered in the presence of

ANSTIS BRICE.

It was then proposed, that Mrs. Hester Sherlock having been dispossessed of the lands of Little Rath,



Rath, Darr, Bodingstown, and Mullenefooky, in the county of Kildare, or her assignee, should be forthwith put into the possession of the said lands.

An amendment was proposed to be added to the question, at the end thereof, viz.

“Although neither the said Hester Sherlock, nor any assignee of her decree, pray or desire the same.”

The question was then put, Whether the said amendment stand part of the said question?

It was resolved in the negative.

Then the previous question was put, Whether the question be now put, that Mrs. Hester Sherlock having been dispossessed of the lands of Little Rath, Darr, Bodingstown, and Mullenefooky, in the county of Kildare, or her assignee, should be forthwith put into the possession of the said lands?

It was resolved in the negative.

Resolved, on the question, nem. con. That a committee be appointed to draw up an humble representation to his Majesty of the proceedings of this house, on the petition of Alex. Burrowes, Esq; in the cause of Sherlock and Annelley, as the same appears in the report from the Lords committees for courts of justice, and the resolutions of this house thereupon, and the proceedings thereof subsequent thereunto.

Ordered, That all the Lords now present be appointed a committee to prepare the said representation to his Majesty, and that their lordships, or any five of them, do meet in the Committee-chamber, near the House of Peers, to-morrow morning, at ten o'clock, and report.

On

On the 17th of October, 1719, the house proceeded on the order of the day, for reading the representation to his Majesty of the proceedings of the house upon the petition of Alex. Burrowes, Esq; in the cause of Sherlock and Annesley *.

And the said representation was read, and agreed to by the house, and is as follows, viz.

To the King's most excellent Majesty.

The humble Representation of the Lords spiritual and temporal in Parliament assembled.

Most gracious Sovereign,

IT is with the greatest concern that we, your Majesty's most dutiful and loyal subjects, the Lords spiritual and temporal in parliament assembled, do find ourselves under a necessity of making this our humble representation to your Majesty.

It evidently appears, by many antient records, and sundry acts of parliament passed in this kingdom, and particularly by one in the 11th of Queen Eliz. intituled, "An Act for attainder of Shane O'Neil, &c." that the kings, with all the princes and men of value of the land, did, of their own good wills, and without any war or chivalry, submit themselves to your Majesty's royal ancestor, King Henry II., took oaths of fidelity to him, and became his liege subjects, who (as it is asserted by the Lord Chief Justice Coke and others †) did ordain and command, at the instance of the Irish, that "such laws as he had in England, should be of force and observed in Ireland." By this agreement the people of Ireland obtained the benefit of the English laws and many privileges, particularly that of having a distinct parliament here,

as

* Lords Journals, Vol. II. fol. 654.

† Coke, 4th Inst. p. 349. Matt. Paris, Anno 1172. p. 105.

as in England †, and of having weighty and momentous matters relating to this kingdom, treated of, discussed and determined in the said parliament.

This concession and compact thus made, and afterwards, by succeeding kings, confirmed to the people of this land, in process of time, proved a great encouragement to many of the English to come over and settle themselves in Ireland, where they were to enjoy the same laws and liberties, and live under the like constitution as they had formerly done in the kingdom of England *; which, thro' God's good providence, has proved a means of securing this kingdom to the Crown of England, and we trust will do so to all futurity. By this happy constitution, and these privileges by us for so many years enjoyed, the English subjects of this kingdom have been enabled faithfully to discharge their duty to the Crown of England, and vigorously set themselves, upon all occasions, to assert the rights thereof, against all the rebellions which have been raised by the Irish enemies. And therefore, we, your Majesty's loyal subjects, do with all submission to your Majesty *insist* upon them, and hope, through your Majesty's goodness, to have them preserved inviolable.

E And

† Coke, 4th Inst. p. 350.

* Pryn, on 4th Inst. p. 287. Anno 31 Ed. III.

† Rex Justic. & Cancellar. suis Hibern. salutem, &c.—

“Item volumus & precipimus quod nostra & ipsius terræ

“negotia præsertim majora & ardua in consiliis perperi-

“tos consiliarios nostros ac prælatos, & magnates, & quos-

“dam de discretioribus et probrioribus hominibus de par-

“tibus vicinis, ubi ipsa consilia teneri contigerit propter

“hoc evocandos. In parliamentis vero, per ipsos consilia-

“rios nostros ac prælatos, & procures aliosque de terra

“prædicta prout pos exigit secundum justitiam, legem, con-

“suetudinem & rationem transeuntur, deducantur, & fide-

“liter, timore, favore, odio aut pretio, post positis discuti-

“antur & etiam terminantur.”

And we beg leave to represent to your Majesty, that though the Imperial Crown of this realm was formerly inseparably annexed to the Imperial Crown of England, and is now to that of Great-Britain*, yet this kingdom being of itself a distinct dominion, and no part of the kingdom of England, none can determine concerning the affairs thereof, unless authorized thereto, by the known laws and customs of this kingdom, or by the exprefs consent of the King †.

And as your royal ancestors have always enjoyed the right and power of determining all matters that related only to this kingdom, by their royal authority, in their parliaments held here, so we humbly hope your Majesty will always look on this right as a most valuable jewel of your crown, which none should presume to touch without your Majesty's consent, and that your Majesty will graciously allow us to represent it, as an invasion of your prerogative, and a grievance to your loyal subjects in this kingdom, that any court of judicature should take upon them to declare that your Majesty cannot determine all controversies between your subjects of this kingdom, and about matters relating wholly to the same, by your royal authority, in your parliament summoned to meet here; or that your subjects of Ireland appealing to your Majesty in your parliament in Ireland, in matters wholly relating to this kingdom, do bring their cause before an incompetent judicature.

We have (may it please your sacred Majesty) endeavoured with our utmost care, to enquire into the grounds of all such appeals or removals of causes from this kingdom, as have at any time been

* Anno 2 Eliz. p. 214. c. 5. c. 7. p. 218.

† Coke, 4th inst. p. 349.

been made into England, and are persuaded that such usages have been introduced by slow degrees, at first the judges here being to determine the causes that came before them by the common laws of England, and sometimes not knowing well the usages there applied to Henry III.†, their then king, for information, who gave them an account what the common law and custom of England in like cases was; and this undoubtedly by the advice of the Justices of the King's Bench, who then were obliged to attend the King wherever he should be‡; and in process of time, when his successors had settled the Court of King's Bench after another manner, and had forborne to sit there themselves in person, the application which formerly used to be made to the King who presided in that Court, came of course to be brought before the Justices of the Court, although the King was not there personally present. And this, as we conceive, gave rise to that custom of removing causes, by writs of error, from the King's Bench in Ireland to the King's Bench in England; but from hence to infer, that therefore appeals from the Parliament of Ireland may be brought before the House of Peers in England or Great-Britain, is a consequence for which there appears to be no manner of ground.

As for the practice of appealing from the High Court of Chancery in Ireland to the Lords of Great Britain, we can find but two precedents of such appeals before the late happy Revolution, one in 1670, and the other in 1679; and we can account for them no otherwise than by observing, that they happened at a juncture when no opposition could be given them from this kingdom, because thro'

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† 14th Henry III. stat. Hiberp. made at Westminster.
 § 28th Edward I. ch. 5.

the prevalency of a Popish interest, no parliament had been held here for some years before, nor were we then in any likelihood of having any called here for many years to come; nor can we find, that any like subsequent appeals from that court have any other foundation than those two precedents.

And such appeals (though they had been of longer standing, and better founded) yet were never supposed to preclude the King's Majesty from his right of giving redress to his subjects of Ireland in his parliament, when assembled here, any more than writs of error to the King's Bench in England had hindered the like writs from being returnable in the Parliament here.

And accordingly when, by God's blessing on the late happy Revolution, this kingdom came to have a Parliament, after twenty-six years intermission, complaints were heard, writs of error and appeals were received, and proper orders were made thereon as formerly; nor were they, as far as we can find, ever questioned, or their validity doubted, till the year 1699, when two appeals from the Parliament here were carried before the Lords in England, though no pleadings to the jurisdiction of the Parliament of Ireland had been offered or mentioned by either party, on hearing the said causes here.

And though the Parliament of Ireland could not then interpose, or any way assert their jurisdiction, because it was not sitting, yet the Lords of England declared the said causes to be *Coram non Judice*, and without hearing the merits of the causes, reversed the decrees that had been made here.

Upon which occasion, we cannot but observe, that the parliament of Ireland (as the constitution thereof

thereof has been for some hundreds of years) being convened by the same authority and writs of summons, and consisting of like members and distinct Houses of Peers and Commons, and the former having the same assistance and attendance from the Judges of the several Courts and Masters of Chancery as in England or Great-Britain, either some record, act of parliament, or antient usage, must be shewn, whereby to make a difference (which has never yet been attempted) or else, from our very constitution it must, as we conceive, appear, that whatever power of judicature is lodged in the English or British Parliament, with respect to that kingdom and its inferior courts, the same must also be allowed to be in the Parliament of Ireland, with like respect to the kingdom and courts thereof. And if it be looked upon as illegal for any inferior court in Great-Britain to act in direct opposition to, or contempt of the orders and decrees of the House of Lords in parliament there assembled, the same must also be concluded upon the like opposition given, or contempt shewn, to such parliamentary orders and decrees, as are or shall be made within this kingdom.

And therefore, in the year 1703, when a Parliament of Ireland met on a complaint of Edward, Earl of Meath, and Cecilia, Countess of Meath, his wife, setting forth, that during the interval of Parliament they had, by order of the Lords in England, been dispossessed of the lands that had been here decreed them, the said Parliament *unanimously* restored the said Earl and Countess to the lands they had been so dispossessed of so effectually, that neither they nor their heirs have been disturbed in the possession of them.

And we may very justly conclude from the
strong

strong resolutions, in which the Parliament here did on that occasion assert their jurisdiction, that they would have proceeded as effectually in vindicating the decree on the other appeal, if the removal of the Lord Bishop of Derry, the appellant here, and a composition made by his successor with the Irish Society of Londonderry, the appellants in England, had not prevented it.

After the time of those two appeals, several writs of error and appeals were brought into your parliament in this kingdom, and among them an appeal wherein Maurice Annesley, Esq; was respondent, which were determined, and the judgment given on them took effect accordingly. But the same Maurice Annesley being respondent in an appeal brought lately from the Chancery of the Exchequer, before the Parliament of Ireland, by Hester Sherlock, appellant, after having appeared to the jurisdiction here, appealed to the Lords of Great Britain, from a decree made here in justice to the appellant Hester Sherlock, and found such countenance there, as has given your loyal subjects just reason to complain of much injury done both to your Majesty's prerogative and their privileges.

For it having (after a full and fair hearing) been decreed in your Majesty's Parliament of Ireland, and accordingly ordered, that the appellant, Hester Sherlock, should be put into possession of certain lands in the said order named, until she should receive thereout a certain sum of money to her decreed, to be due and chargeable on the said lands. And the said decree and order having accordingly been obeyed, and put in execution by the then high-sheriff of the county of Kildare, to whom the said order was directed; and the said Hester Sherlock being accordingly in the actual pos-

possession of the said lands, the Lord Chief Baron, together with the other barons of your Majesty's Court of Exchequer in this kingdom, have taken upon them, in an illegal and unprecedented manner, to cause the said Hester Sherlock to be dispossessed of the said lands, and to lay several great fines upon the late high-sheriff of the said county of Kildare, for refusing to give obedience unto the orders of them, the said barons, in that case issued, although their said orders were manifestly contrary to the laws, customs, and antient usages, of this your Majesty's Kingdom, as well as to the above-mentioned resolutions formerly made in the case of the late Earl of Meath, and continuing upon record in the Journals of Parliament, of which resolutions, as well as of the several resolutions and decrees in like manner made upon the appeal of the said Hester Sherlock, the said barons had sufficient and timely notice before the issuing of any of their above-mentioned illegal orders, as in a report of this whole proceeding, now also entered in the Journals of Parliament (a copy whereof we herewith humbly lay before your Majesty) may more fully and at large appear.

Hereupon we humbly crave leave to represent unto your Majesty, that although appeals from the Courts of Equity in this kingdom to the Lords of England or Great-Britain, are but a very late practice, (as we have already set forth); yet in all such cases, it has been the constant and received practice here, that no copy of any order of the said Lords was ever allowed, or demanded to be allowed, as authentic in any such court, except the same were expressly directed unto the court which was to put the same in execution, and proved by a witness viva voce, upon oath, to be a true copy of the original order. Nor does it appear, that any such court

court ever claimed, or pretended to any authority, to supply any defects supposed at any time to be in any such order, or by virtue of such order in the least to go beyond what expressly and in words was in such order contained. And yet so it is, that although the only pretence of the said barons for these their illegal proceedings, is grounded upon certain copies of orders, or pretended orders, from the Lords of Great-Britain, yet neither were the said orders, or any of them, directed to the Court of Equity or Chancery-side of the Exchequer, (where the cause originally lay, and from whence the appeal was) but only to the Lord Chief Baron and other barons, which is the stile of the common law-side thereof, nor were the said copies, or any of them, in manner aforesaid proved to agree with the original orders, neither were the names of any lands, or so much as of any county, inserted in the said copies, or any of them. And yet notwithstanding all these notorious defects and nullities of the said pretended orders, the said barons have proceeded not only in their own names, to whom the said pretended orders were directed, but also in the names of the Chancellor and Treasurer of the Court of Exchequer, (to whom the said orders were no way directed) to issue forth several injunctions and orders, and therein, without any warrant for so doing, to insert the names of lands, and of the county wherein they are supposed to lie, in order to dispossess the said Hester Sherlock of the lands whereof she had been put into possession, as is herein above-mentioned.

And that your Majesty may be yet more fully apprised of the arbitrariness as well as the illegality of the proceedings of the said Barons, We further, in all humble manner, lay before your Majesty, that whereas, amongst other rules

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of practice in all your Majesty's Courts, throughout this your kingdom, by ancient Law and Custom established, it is universally received, that every Order or other Rule of Court ought to be made upon the motion of some counsel or attorney, or other person by law or custom allowed to make such motion, that no injunction or writ, ought to issue out of any of your Majesty's Courts, (except in the Crown's cause) without the name of a fix clerk or attorney, thereunto subscribed, (who is to be accountable unto every person, who thro' any undue practice of his, shall be aggrieved by such writ or injunction), and that no proceedings shall be grounded upon any written affidavit, which is known to be either false, or defective in any material part thereof, (except such defect be first supplied or falsity expunged), the said Barons in these their proceedings, have acted in open violation of these, as well as other Rules, which by the law they ought to have observed and strictly kept to. The Barons having ordered an injunction to issue for the dispossessing of the said Hester Sherlock, without any motion for the same made either by counsel or attorney, or by any other person, except what was offered in Court by the said Lord Chief Baron himself. The said injunction, also, having no name of any attorney thereunto affixed or subscribed; and the affidavit of John Annesley (upon which the said Barons afterwards proceeded to fine the said late high sheriff) having several notorious falsities in it, of which, tho' the said Barons were publicly advertised at the time when the said affidavit was read in open Court, yet they took on them to act thereupon, without causing the same to

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be rectified, or the said falsities to be expunged or altered.

And, although the said Orders from the Lords in Great Britain expressly required no more, but that Maurice Annesley should be restored to the possession of those lands, of which the said Maurice was dispossessed, pending the appeal before the said House; yet the said Barons in their said injunction, not only ordered possession of certain lands by name, to be given to the said Annesley, as is already mentioned, but also, grounded this their injunction upon an affidavit, wherein it is not so much as alledged that the said Maurice was at all possessed or dispossessed of any lands whatsoever pending the said appeal.

And whereas it is the duty of the Barons of your Majesty's Court of Exchequer in this kingdom, and a part of the oath by each of them taken at their entrance upon their said office, "That where they may know any wrong or prejudice to be done to the King, they shall put and do all their diligence that to redress. And if they may not do it, they shall tell it to the King, or them of his council, or to the King's Majesty's Lieutenant, or other Chief Governor or Governors of this Realm for the time being." So far have the said Barons in the present case been from doing all their diligence to redress the wrong or prejudice done to your Majesty's prerogative, of finally determining in your Parliament here, matters relating wholly to this your kingdom, that they seem to have acted with great diligence and zeal in direct opposition thereto, and to have taken such measures as will, in effect, establish

establish a jurisdiction superior to that which your Majesty undoubtedly has in your High Court of Parliament in this kingdom, nor does it in the least appear, or is it at all pretended, that the said Barons, or any of them, during all the above-mentioned proceedings, did ever tell, or make known the same, either to your Majesty's Lieutenant, or other Chief Governor or Governors, or to your Majesty's Privy Council, who if they had been timely acquainted therewith, might (according to their duty) have made the same known to your Majesty, or otherwise have done what was fit and proper for the supporting your Majesty's Royal Prerogative, and defending the just rights and privileges of this your Parliament and People.

And here we beg leave to lay before your Majesty some of the many evil consequences which we apprehend must necessarily follow from such exorbitant practices as these, if a timely and effectual stop be not put to them.

It is the right and happiness of the subjects of this kingdom, as well as of those of Great Britain, that by their respective constitutions, the administration of justice is near at hand, and within the kingdom whereunto they belong. So that if any of your Majesty's liege people, are at any time wronged or oppressed in any of the Courts of law or equity, they may, without any great trouble or expence, have recourse to your Majesty, in your high Court of Parliament, where they may assure themselves of speedy redress. But if this your Majesty's Highest Court within this kingdom is deprived of the power of finally

determining the causes which come before them, all such of your subjects as do not abound in wealth, and thereby are not able to follow their causes, or bear the expence of them in Great Britain, will be under a perpetual necessity of sitting down with the greatest wrong or oppression which at any time, under the colour of justice, or by the management of rich and potent adversaries may be laid upon them, which (considering the poverty that every where prevails throughout this kingdom) must, if not prevented in a short time, become a most grievous and intolerable evil. And your Majesty's Royal Predecessor, Edward III. was so sensible of the hardships that his loyal subjects of this kingdom suffered for want of having a means of reversing erroneous judgments within this kingdom, that by his Charter, dated August 30th, in the 29th year of his reign, on the complaint of his subjects of Ireland, " he
 " commanded all his Judges and Ministers be-
 " fore whom any processes should be held at the
 " prosecution of the parties aggrieved, to return
 " the Rolls of the Records, and Processes into
 " the Parliaments to be held in the kingdom of
 " Ireland, and that the Records and Processes
 " should be recited and examined, and the er-
 " rors (if any should be found in them) duly
 " corrected."

It

* Pryn, on 4th Inst. pag. 286. Anno 29 Edw. III.
 " Edwardus Dei gratia, &c. Ex parte non nullorum
 " fidelium nostrorum communitatis terræ nostræ Hiber-
 " niæ: nobis est graviter conquerendo monstratum ut cum
 " ipsi damna & gravamina quam plurima a magno
 " tempore sustinuerint ex hoc; et etiam ex hoc, quod er-
 " rores qui in Recordis & Processibus placitorum nec in
 " Parlia-

It is, under God, the great security of this your Majesty's kingdom of Ireland, that by the laws and statutes thereof, the same is annexed and united to the Imperial Crown of England, and declared to be depending upon, and for ever belonging to the same: but if all judgments, decrees,

"Parliamentis in eadem terra corrigi nequeunt, nec alias
 "iustitia inde fieri sine remedia in Anglia querendo
 "propter quod quidem propter labores & expensas circa
 "præmissa appositæ ad maximam miseriam & inopiam
 "deducuntur; & quidam omnino ex hæredati existunt,
 "per quod pro quiete & indemnitate populi nostri in
 "terra prædicta, sub nostro regimine existentis cui in
 "exhibitione iustitiæ sumus debitores: Ordinamus quod,
 "&c. et quod ad prosecutionem omnium & singulorum
 "qui conqueri voluerint errores in Recordis & Processibus
 "coram aliquibus iusticiis seu aliis ministris prædictis habi-
 "tis intervenisse Rotuli eorundem Recordorum & Pro-
 "cessuum in Parliamentis nostris in eadem terra tenend.
 "per iusticiis seu ministros coram quibus Recordis & Pro-
 "cessus illa fuerint deferantur & ibidem eadem Recordis
 "& Processus diligentur recitenter & examinentur; &
 "errores, si quos in eisdem inveniri contigerit debite cor-
 "rigantur; & ideo vobis mandamus quod ordinationem
 "prædictam in terra nostra prædicta teneri & partibus
 "conquerentibus plenam & celerem iustitiam fieri fac. in
 "forma prædicta quibuscunque mandatis vobis aut aliis
 "in terra prædicta ante hæc tempora in contrarium di-
 "rectis non obstantibus ita quod aliquis materiam non
 "habeat nobis pro de sectu iustitiæ super casibus prædictis
 "de cætero conquerendi. Teste apud Westminster, 30 die
 "Augusti."

It appears from the latter end of this Record, that the original power of Parliaments in Ireland, settled by King Henry the Second, (as is above set forth) had afterwards been restrained, as to Writs of Error, by some subsequent Mandates of the Kings of England, which Mandates are hereby recalled and made void.

crees, and determinations made in this your Majesty's Highest Court, within this your kingdom, are subject to be nulled and reversed by the Lords in Great Britain, the liberties and properties of all your subjects of Ireland must thereby become finally dependant on the British Peers, to the great diminution of that dependence which by law we always ought to have immediately upon the Crown itself.

That your Majesty has, by the constitution of this your Realm of Ireland, the full power of judging and determining all causes that belong to it alone in Pleno Parlamento, is what no man hitherto has ventured openly to deny or doubt of.

But if in all cases that relate to this kingdom, the *dernier resort*, (as some of late have affected to speak) ought to be to the House of Lords in Great Britain, however this your Majesty's power may still in words be acknowledged, the force and effect of it is in reality taken away and wholly vested in the British Peers.

And we cannot but observe, with the utmost concern, that by this practice of the Peers of Great Britain, just and unjust causes will meet with equal encouragement. For however rightly such causes may be determined in Parliament here, the decrees will be annulled and reversed by the Peers of Great Britain without hearing or entering into the merits of the cause, upon pretence that the proceedings were *Coram non Judice*.

The

The writs for summoning the Lords spiritual and temporal, and electing the Commons to assemble in parliament here, being the very same with those in England or Great-Britain, as has been before observed, either the respective powers in each kingdom must still be the same, or else the Peerage of this your Majesty's kingdom must remain little more than an empty title, and the Commons thereof stand for ever deprived of that most valuable privilege of impeaching in parliament, which cannot possibly be maintained if there be no such thing as a parliamentary judicature within this realm; *and if the power of the judicature may, by a vote of the British Lords, be taken away from the Parliament of Ireland, no reason can be given why the same may not, in like manner, deprive us of the benefit of our whole constitution.*

It is notorious, that the Lords of Great-Britain have not, in themselves, either by law or custom, any way of putting their decrees in execution within this kingdom, of which they have given most undoubted evidence by their late application to your Majesty, to cause such their decrees to be executed by an extraordinary interposition of your royal power. And should your Majesty think fit to yield to this their desire, we humbly presume to think it would highly affect the liberty of your Majesty's loyal subjects of this kingdom.

In order to prevent the appellant, Hester Sherlock, above-mentioned, from making any farther application to your Parliament here, your Majesty's Deputy-receiver, John Pratt, Esq; thought fit to pay above £1800 to the said Hester Sherlock, which, on examination, he alleged to be his own money ;

money; and that he made an agreement with the said Hester, of himself, without any order from any person whatsoever. But that from some conversation which he had with persons of judgment, he thought he had reason to hope and expect that since what he had done was for the public good, the government would not permit him to be a sufferer. What particular grounds the said John Pratt had thus to hope and expect, has not as yet been made known to us. But if such hopes and expectations as these are from time to time to be satisfied, we leave your Majesty, in your royal wisdom, to judge what the evil consequences thereof may be.

And we farther humbly represent to your Majesty, that these proceedings of the Lords of England have greatly embarrassed your Parliament, and disquieted the generality of your most loyal Protestant subjects of this your kingdom, and must, of necessity, bring all sheriffs and officers of justice under great hardships, by reason of the clashing of different jurisdictions. Nor can we but with grief observe, that whilst many of the Peers and Commons who sat in Parliament were Papists, their judicature was never questioned; but of late, since only Protestants are qualified to have a share in the legislature, their power, and the right of hearing causes in Parliament, hath been denied, to the great discouragement and weakening of the Protestant interest in Ireland.

And having thus, with all humility, laid before your Majesty your undoubted power and prerogative within this your kingdom of Ireland, the immediate dependance of the same upon your Majesty's

jeſty's crown, the right your Maſeſty has to hold
 Parliaments here, as in Great-Britain, and of fi-
 nally determining therein all matters that wholly
 relate to this realm, together with the great in-
 croachments that of late have been made upon
 your Maſeſty's prerogative, and the rights of this
 your Parliament, and the illegal unprecedented
 proceedings of the Lord Chief Baron and the other
 Barons of your Maſeſty's Court of Exchequer,
 whereby they have endeavoured to ſupport thoſe
 encroachments with the evil conſequences of ſuch
 proceedings, in caſe that a ſpeedy and effectual
 ſtop be not thereunto put. We moſt humbly
 hope, that all theſe things being duly conſidered
 and weighed with your Maſeſty's uſual wiſdom, will
 abundantly juſtify us in the methods we have taken,
 as well for the ſupporting of your Maſeſty's royal
 prerogative, as the preſervation of the juſt rights and
 liberties of ourſelves and our fellow ſubjects, as the
 ſame are ſet forth in the ſeveral reſolutions we have
 come to,—a copy whereof we have hereunto an-
 nexed,—with all humility aſſuring your Maſeſty,
 that no difficulties which we may be laid under
 ſhall hinder us from giving the utmoſt diſpatch to
 all your Maſeſty's affairs, or from moſt chearfully
 demonſtrating that loyalty and affection to your
 Maſeſty's perſon, and attachment to your intereſt,
 which becomes your Maſeſty's dutiful and obed-
 ent ſubjects, whereof we again, from our hearts,
 make an humble tender to your moſt ſacred Ma-
 jeſty.

Reſolved, That a committee be appointed to
 draw up an humble Addreſs to his Grace the Lord
 Lieutenant, to deſire his Grace to lay the ſaid Re-
 G presentation

presentation before his Majesty, in the best and most effectual manner.

Ordered, That the Lords Committees appointed to prepare the said Representation, do also prepare and draw up the said Address to his Grace the Lord Lieutenant, their Lordships, or any five of them, to meet immediately in the Committee-chamber, and report,

To his Grace CHARLES, Duke of Bolton, Lord Lieutenant General and General Governor of Ireland.

May it please your Grace,

WE, the Lords spiritual and temporal in Parliament assembled, have thought ourselves obliged humbly to represent to his Majesty some incroachments that have lately been made on his Majesty's prerogative, and the rights of his Parliament in Ireland, and have drawn up our observations thereon, in this our Representation, which, with all duty, we present to your Grace, intreating your Grace that it may be laid before his Majesty in the best and most effectual manner.

Resolved, That the said Address to his Grace the Lord Lieutenant, and the Representation of this House to his Majesty, be presented to his Grace the Lord Lieutenant, by the whole House.

Ordered, That the Lord Chancellor do wait upon his Grace the Lord Lieutenant, to know his pleasure,

pleasure, when he will be attended by this House, with the said Address and Representation.

On the 19th of October, 1719, the Lord Chancellor acquainted the House, that he had waited upon his Grace the Lord Lieutenant, to know when he would be pleased to be attended by the House, with their Address to his Grace, and Representation to his Majesty, and that his Grace had appointed to-morrow at two o'clock, at his Majesty's Castle of Dublin.

The Address and Representation were accordingly presented. The answer given thereto was the infamous Declaratory Act of the 6th of George the First, declaring that "the King, with the consent of the Lords and Commons of Great-Britain in Parliament assembled, had power to make laws of sufficient force to bind the kingdom and people of Ireland, and that the House of Lords of Ireland had not, nor ought of right to have, any jurisdiction to judge of, affirm, or reverse, any judgment or decree, made in any court within this kingdom; and that all proceedings before the said House of Lords, upon any such judgment or decree, were void."

Notwithstanding this *all-powerful* declaration, we do not find that the Earl and Countess of Meath were ever disturbed in the possession given to them, *by the authority of the Irish Lords*,—that the arbitrary fines upon Mr. Burrowes were ever attempted to be levied,—or that his Majesty ever expressed his displeasure against the
Lords

**Lords of Ireland, for their treatment of his worthy
Barons.**

A further Comment upon the illiberality and injustice of this Statute, is now unnecessary. The *Unanimous Voice of the People*, and their *determined Resolution to oppose its operation*, is a temporary vindication of their rights; but it rests with the two Houses of Parliament to emulate the virtue of their ancestors, and rescue their peculiar privileges from the hand of Violence.

F I N I S.

